

REMARKS

We are in receipt of the Office Action of November 3, 2003, and the above amendments and following remarks are made in light thereof.

Claims 1-14 are pending in the application. Pursuant to the Office Action, claims 1, 3, 5-9 and 14 are rejected under 35 USC 102(b) as being anticipated by Dorn 6,334,860. Claims 2 and 4 are rejected under 35 USC 103(a) as being unpatentable over Dorn. Claims 10-14 are rejected under 35 USC 103(a) as being unpatentable over Dorn in view of Yamauchi 6,273,887. Claims 1-14 are also rejected under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over claims 1-11 of U.S. Patent No. 6,517,536 of Dorn.

Dorn discloses a bipolar medical instrument having two jaws (14, 16). Each jaw includes a metallic base (28, 30) to which a ceramic insulator (32, 34) is secured. An electrically-conductive metal heat element (36, 38) is connected to the insulators. As shown Fig. 2, each insulator element (32, 34) and electrode (36, 38) extends beyond their associated base (28, 30). Further, each conductive element (36, 38) has a tip (42, 44) that wraps around the ends of the jaw and back toward --but spaced from-- the metallic base 28, 30. According to the specification, this configuration provides a protective cover for the distal ends of the insulator elements to protect them against wear.

Turning to the invention of the present application, each jaw comprises three distinct elements, namely an elongated support member, its associated conductive member, and an insulator disposed between the conductive member and the support member. Importantly, this support member supports "substantially the entire length" of its associated conductive ablation member. Claims 1 and 3 have been amended to emphasize this feature.

In contrast, the support member in Dorn extends a distance less than the entire length of the conductive member. This is necessary in Dorn to insure that the tips, which wrap around the ends of the jaws, do not contact the support members 28, 30, which would result in a short-circuit current path being created along the backside of these jaws. As such, applicant respectfully submits that claims 1 and 3, as amended, are not anticipated by Dorn, and are thus allowable. Each of the remaining claims 2 and 4-14 is dependent either directly or indirectly from one of claims 1 and 3, and is thus also believed to allowable.

Turning to the rejection for double patenting over Dorn, applicant respectfully requests the examiner to withdraw this rejection, as the inventor and assignee of the present invention (Michael D. Hooven and Atricure Inc., respectively) are not the same as the applicant or inventor of Dorn (Jürgen Dorn, and Karl Storz GmbH & Co.).

Based upon the foregoing, applicant respectfully submits that the application is in condition for allowance, and an early Office Action in this regard is earnestly solicited.

Respectfully submitted,

Date: May 3, 2004

By: Gary W. McFarron
Gary W. McFarron, Esq.
Registration No. 27,357
Cook, Alex, McFarron, Manzo,
Cummings & Mehler, Ltd.
200 West Adams St., Suite 2850
Chicago, IL 60606
Telephone: (312) 236-8500